

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**DOCKET NO. 2020-247-A**

In the Matter Of	)	
	)	
Public Service Commission Review of	)	<b>REPLY COMMENTS OF</b>
South Carolina Code of Regulations Chapter	)	<b>PIEDMONT NATURAL</b>
103 Pursuant to S.C. Code Ann.	)	<b>GAS COMPANY, INC.</b>
Section 1-23-120(J)	)	
	)	

Pursuant to the Public Service Commission of South Carolina’s (“Commission”) April 23, 2021 Notice and Request for Comments Regarding Proposed New Pipeline Regulation (“April 23 Notice”), Piedmont Natural Gas Company, Inc. (“Piedmont” or the “Company”) hereby submits the following Reply Comments in response to the comments filed by the Southern Environmental Law Center (“SELC”) on June 11, 2021 (“Further Comments”).

**PROCEDURAL HISTORY OF THIS DOCKET**

1. On October 14, 2020, pursuant to S.C. Code Ann. Section 1-23-120(J), the Commission opened the instant docket to formally review Chapter 103 of the South Carolina Code of Regulations (“Notice of Review”). In its Notice of Review, the Commission reserved April 16, 2021, as the date to hold a stakeholder workshop to review S.C. Code Ann. Regs. 103-300 *et seq.* and S.C. Code Ann. Regs. 103-400 *et seq.* (“April 16 Workshop”).

2. On December 7, 2020, the Commission filed a Notice of Workshops in which it set April 6, 2021, as the deadline to file written comments and to notify the Commission of participation in the April 16 Workshop. On February 19, 2021, the

Commission issued a Second Amended Notice of Workshops in which it set April 14, 2021, as the deadline to file reply comments.

3. On April 6, 2021, SELC filed comments related to S.C. Code Ann. Regs. 103-400 *et seq.* (“Initial Comments”).<sup>1</sup>

4. In SELC’s Initial Comments, SELC proposed a new regulation, “New Pipelines,” that establishes a procedure for the placement and construction of natural gas facilities on a going forward basis. Among other things, SELC’s proposed regulation requires gas utilities constructing or extending a pipeline to provide detailed costs of project, information on whether the proposed project enters an area that is served by an electricity provider, environmental impact and ratepayer impact. After a gas utility files the requisite information at the Commission, SELC’s proposed regulation requires the Commission to schedule a hearing and provide notice of such hearing to the public. At the hearing, the gas utility may make a presentation concerning the proposed pipeline and those interested may ask questions concerning the project. SELC claims that its proposed regulation makes the process by which gas utilities decide to build new lines and exercise eminent domain more transparent, ensures public input, and protects ratepayers.

5. On April 14, 2021, Piedmont filed reply comments in response to the comments filed by the Initial Commenters expressing its opposition to the additional regulations proposed by SELC and providing its commitment to thorough and timely

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<sup>1</sup> The Blue Ridge Environmental Defense League (“Blue Ridge”), the Department of Consumer Affairs, the Niskanen Center (“Niskanen”), the Property Rights and Pipeline Center, and Upstate Forever (collectively, with SELC, the “Initial Commenters”) also filed comments on April 6, 2021.

engagement with communities impacted by necessary enhancements of the Company's pipeline system.

6. In the April 23 Notice, the Commission stated that there was substantial discussion surrounding SELC's proposed regulation during the April 16 Workshop. The April 23 Notice indicated that the Commission was interested in further comments regarding SELC's proposed regulation and, as such, requested that workshop participants file comments by June 11, 2021, and reply comments by June 25, 2021.

7. On June 11, 2021, pursuant to the April 23 Notice, SELC submitted its Further Comments.<sup>2</sup> In its Further Comments, SELC claimed that its proposed regulation is needed to protect against the way that for-profit gas corporations exercise eminent domain to build new gas lines. SELC's Further Comments also elaborated on the following components of SELC's proposed regulation: (1) transparency, public information, and notice requirements; (2) requirements that gas corporations examine important issues and share their analyses with the public; and (3) a requirement that the Commission find that a proposed pipeline is in the public interest and necessary. Moreover, SELC's Further Comments addressed several legal issues that were raised at the April 16 Workshop, including Commission authority and eminent domain.

8. Pursuant to the April 23 Notice, Piedmont hereby submits the following Reply Comments in response to SELC's Further Comments.

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<sup>2</sup> American Petroleum Institute, Blue Ridge, Dominion Energy South Carolina, Inc., Niskanen, and Piedmont also filed further comments on June 11, 2021.

### **REPLY COMMENTS**

9. These Reply Comments respond to several of SELC's arguments in its Further Comments.

10. First, SELC's primary concern appears to be the inappropriate use of eminent domain by natural gas distribution companies. As Piedmont has stated previously, the Company highly values its relationships with the communities and customers served in South Carolina and utilizes eminent domain as a last resort. The Company always attempts to minimize or avoid condemnation actions to the maximum extent possible and has been largely successful in this approach. In fact, Piedmont has obtained property via condemnation only one time in the past five years. SELC is attempting to solve a problem that does not exist.

11. Second, SELC claims that Piedmont proposed one or more routes for its planned infrastructure enhancement project in northern Greenville County ("Greenville County Project") that went through protected natural areas and impacted protected species without being fully aware of the implications of its route.<sup>3</sup> As a result, SELC states that Piedmont was required to repeatedly redraw its route before withdrawing the [Greenville County Project] entirely.<sup>4</sup> SELC's claim mischaracterizes the process utilized for this project and its status. Piedmont routinely considers alternative routes for transmission lines it constructs and may choose one route over another based on a number of factors impacting the costs, efficacy, ease of construction and community impact. Different routes for new

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<sup>3</sup> Further Comments at 3.

<sup>4</sup> *Id.*

facilities typically come with differing benefit/burden profiles and it is not unusual for different stakeholders to assign different values to those route specific benefits and burdens. The process of evaluation and reevaluation inherent in Piedmont's route selection process is an attempt to find the best route for new pipeline construction. It is also not true that Piedmont has "withdrawn" its Greenville County Project. Instead, Piedmont is reevaluating the route of that line based on information received, including the concerns of local communities.

12. Third, SELC attempts to support its proposed requirement that gas corporations share certain information with the public by alleging that by not providing information concerning the Greenville County Project up front, Piedmont later faced "embarrassment" when this project was withdrawn.<sup>5</sup> As noted above, however, this project remains active and Piedmont is simply evaluating alternatives, which is part of the ordinary process of pipeline siting and construction. And while Piedmont appreciates SELC's apparent concerns for Piedmont's feelings, Piedmont can assure the Commission that it has suffered no embarrassment about following the normal procedures for pipeline construction in this case.

13. Fourth, SELC argues that its proposed regulation is consistent with, and does not impact, South Carolina's Eminent Domain Procedure Act ("Act")<sup>6</sup> in that it creates a separate process for informing affected community members and ensuring a proposed pipeline is in the public interest prior to the exercise of eminent

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<sup>5</sup> *Id.* at 4.

<sup>6</sup> *See* S.C. Code Ann. § 28-2-10 *et seq.* (2021).

domain.<sup>7</sup> What SELC fails to acknowledge, however, is that its proposed regulation is a collateral attack on the eminent domain powers granted to public utilities under the Act. S.C. Code Ann. Section 28-2-20 provides that “[i]t is the intention of the General Assembly that th[e] [A]ct is designed to create a *uniform procedure* for all exercise of eminent domain power in this State . . . [and] [i]n the event of conflict between th[e] [A]ct and any other law with respect to any subject governed by th[e] [A]ct, th[e] [A]ct shall prevail.”<sup>8</sup> Moreover, S.C. Code Ann. Section 28-2-60 expressly states that the Act “shall constitute the *exclusive procedure* whereby condemnation may be undertaken in this State.”<sup>9</sup> Accordingly, Title 28 of the South Carolina Code makes clear that it is the legislative intent that the eminent domain procedures outlined under the Act be exclusive.<sup>10</sup> SELC’s proposed regulation would initiate significant new procedures before the Commission for pipeline construction with obligations placed on the gas utilities that are not contemplated by Title 28. It would also require the Commission to evaluate and regulate the siting of new pipelines and would, therefore, interfere with the established right of gas utilities to construct facilities necessary to serve the public under the State’s eminent domain laws. In this way, the SELC’s proposed new regulation is contrary to the legislature’s intent that eminent domain be the exclusive process for acquiring property on which to place natural gas infrastructure in South Carolina.

14. Additionally, SELC contends that it is “irrelevant” that the provision

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<sup>7</sup> Further Comments at 7-8.

<sup>8</sup> See S.C. Code Ann. § 28-2-20 (emphasis added).

<sup>9</sup> *Id.* § 28-2-60 (emphasis added).

<sup>10</sup> See S.C. Code Ann. §§ 28-2-20 and 28-2-60.

of utilities is a public use because it is a separate question whether a particular pipeline is in the public interest or is duplicative of service already provided.<sup>11</sup> Contrary to SELC's claim, it is very relevant that the provision of public utilities is a public use because this determination embodies the South Carolina legislature's decision that the larger public good derived from the availability of utility infrastructure outweighs and over-rides the interests of individual landowners in these circumstances – which is the entire rationale underlying Title 28.<sup>12</sup>

### **CONCLUSION**

Based upon the foregoing, Piedmont respectfully requests that the Commission accept its Reply Comments in this proceeding as set forth above and looks forward to continued participation in this proceeding.

Respectfully submitted, this the 25th day of June, 2021.

**Piedmont Natural Gas Company, Inc.**

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<sup>11</sup> Further Comments at 8.

<sup>12</sup> See S.C. Const. Ann. Art. I, § 13 (“Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.”); see, e.g., *Bookhart v. Cent. Elec. Power Coop., Inc.*, 219 S.C. 414, 426 (1951) (holding that “[t]he generation and transmission of electricity for the purposes of furnishing light, heat, or power on equal terms to all within the range of service, is a public use for which the power of eminent domain may be exercised”); *Twin City Power Co. v. Savannah River Elec. Co.*, 163 S.C. 438, 471 (1930) (“The power of eminent domain may be exercised for the purpose of erecting and maintaining plants for generating electricity and distributing the same to the public for light, heat and power.”); *Riley v. Charleston Union Station Co.*, 71 S.C. 457, 486 (1905) (determining that a railroad station is a “public use”).

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the attached is being served this date upon all of the parties to this docket electronically or by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, at the addresses contained in the official service list in this proceeding.

This the 25th day of June, 2021.

/s/ Richard K. Goley  
Richard K. Goley